

Board of Chiropractic Examiners

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BOARD OF CHIROPRACTIC EXAMINERS PUBLIC SESSION MINUTES

November 27, 2007
400 R Street, Room 101
Sacramento, CA 95814

BOARD MEMBERS PRESENT

Richard Tyler, D.C., Chair
Frederick Lerner, D.C., Vice Chair
Francesco Columbu, D.C., Secretary
Jim Conran, Public Member
Judge Duvaras, Public Member
Hugh Lubkin, D.C.

STAFF PRESENT

Brian J. Stiger, Executive Director
LaVonne Powell, DCA Senior Staff Counsel
Thomas Rinaldi, Deputy Attorney General
Marlene Valencia, Staff Services Analyst

Call to Order

Dr. Tyler called the meeting to order at 10:07

Roll Call

Dr. Columbu called the roll. All members were present.

Approval of Minutes

- August 16, 2007, Open Session

Dr. Tyler asked for a motion to approve the October 25, 2007.

**DR. LERNER MOVED TO ADOPT THE OCTOBER 25, 2007, OPEN SESSION MINUTES.
DR. LUBKIN SECONDED THE MOTION. VOTE: 5-0. MOTION CARRIED.**

Executive Officer's Report

Administration

Budget Update

Mr. Stiger reported that the Board has expended approximately \$546,000 through October 31, 2007, which is about 35% of our total budget. This does not include the projected \$370,000 in legal fees needed to defend the Board in two lawsuits. Board staff is working closely with the Department of Finance to address the Board's fiscal issues and have every intention of keeping the office functioning through the end of the fiscal year. The effective date of the lay-off is January 7, 2008, when staffing will be reduced to six. The consequence of the budget cut is most noticeable in our Enforcement Unit. The Board is unable to initiate a number of enforcement cases due to limited funds.

Judge Duvaras made a recommendation that licensed Chiropractors with ten years of experience and clean record offer their services on a pro bono basis to assist Board staff review consumer complaints. Mr. Stiger suggested that these chiropractors might be used instead as expert reviewers and keep professional staff evaluating consumer complaints.

Mr. Conran expressed his concern about deputizing members of the profession to do work on behalf of the state and suggested that the Board move cautiously. Mr. Conran also suggested that the Chair and the Executive Officer meet with Senator Mark Ridley-Thomas to resolve the budget issue. Mr. Conran stated it is incumbent upon the Board to reach out to the Legislature to address our budget. Dr. Lerner agreed with Mr. Conran's suggestion and informed the Board he has contacted the offices of Assembly Members Laird and Eng but has not been successful in making contact.

Mr. Stiger provided licensing and examination statistics and indicated that licensing processing time will increase in January due to staffing reductions. Dr. Lerner asked how licensees and applicants would be affected. Mr. Stiger projected that processing times would probably take up to 45 days or longer.

Dr. Lerner asked what licensees should do if they submit their renewals in two weeks before the expiration date and they don't receive their new licenses. Should licensees continue to display the old license? Mr. Stiger suggested that licensees continue to display their licenses and encouraged all licensees to renew early to avoid potential delays.

Mr. Conran asked if the Board is working on capturing e-mail addresses of licensees to communicate more efficiently and rapidly. Mr. Stiger said Board staff attempted to achieve this through a subscription

on the Board's website but it went down during the transition to our new web site.

Mr. Conran asked that the Board be updated at the next meeting on final personnel changes and how operations would be continued with a reduced staff.

Mr. Stiger provided enforcement statistics and noted that in comparison to last year the number of violations have decreased.

Board Member training on the Bagley-Keene Open Meetings Act and other relevant laws

Ms. Powell asked the Board Members if they had any questions or topics that they would like to discuss. Mr. Conran applauded the Chair for continuing to have this topic on the agenda and hopes that the new Chair does the same.

Federation of Chiropractic Licensing Boards (FCLB) District Meeting Delegate Report

Dr. Lubkin briefly summarized his experiences in attending these meetings and the value of the Federation of Chiropractic Licensing Boards and the National Board of Chiropractic Examiners in assisting this Board meets its mission. Dr. Lubkin introduced Dr. Edward Weathersby, D.C., Dr. Martin Kollasch, D.C. and Mr. Horace Elliott, who provided an overview of their organizations and services that they provide to regulatory boards.

Committee Reports

Continuing Education

Dr. Lubkin reported that the committee needs to review and update the current regulations to increase CE hours, address distance learning, and CE providers. The committee intends to meet early next year to begin working on the regulations.

Enforcement Committee

Dr. Lubkin reported that the board needs to move forward with 306.1 or rewrite the regulation, or abolish the regulation. Dr. Lubkin reported that the issue of chiropractors conducting x-rays needs to be further researched before the committee could come forward with a recommendation to the full board.

Dr. Tyler expressed his concern that the committee was not moving quickly enough with 306.1. Dr. Lubkin stated he will provide a written report at the next meeting on the status.

Ms. Powell, expressed her concern with the Board moving forward with establishing Quality Review Panels from a legal perspective and public policy perspective. Ms. Powell is concerned that this would set this Board far apart from all other healing arts boards.

Dr. Tyler added that the Board needs a strong Chiropractic input regarding complaint review and that the Board worked well for 70 years prior to the establishment of a chiropractic consultant.

Mr. Conran agreed with Ms. Powell. He said that every other Board moved away from this because Boards got themselves in trouble because of the actions of other people and this would be contrary to every other healing arts board in the state.

Dr. Tyler asked Dr. Charles Davis, D.C. as it was done before, is there anything about this program that is unfeasible or could open up the Board to legal problems. Dr. Davis said he recognizes potential for problems as staff counsel stated. Dr. Davis says that the Board needs to establish a process of instruction and standards for review panels, consultants or experts.

Dr. Lerner offered that most of the Board members would oppose the hiring of a Chiropractic Consultant

due to the recent past. Dr. Lerner states that the Board has a duty to implement regulations and the Board needs to make a decision.

Mr. Stiger stated that the Board has only considered two options either the Chiropractic Consultant or 306.1 and that other options need to be considered. Mr. Stiger stated if a decision needs to be made today, from a staff's perspective, 306.1 should be repealed.

Dr. Lubkin agreed with Mr. Stiger in that the Board has not considered all available alternatives and that 306.1 needs to be rewritten at a minimum. Dr. Lubkin requested time to work with staff counsel and the Executive Officer to prepare a report on the status of 306.1.

Dr. Tyler asked Dr. Lubkin to meet with Ms. Powell, Dr. Davis and other interested parties to reach some consensus.

Dr. Davis raised several concerns about the Board's current Expert Reviewers including conflicts of interest.

Ms. Powell suggested that she work with Mr. Stiger to develop an Expert Reviewer manual to present to the Board at the next Board meeting. Mr. Stiger agreed to share the manual with Dr. Davis and other interested parties.

Dr. Tyler clarified the Board's priorities in that Board staff will proceed with the enforcement issues prior to addressing the chiropractic x-ray issue due to staffing issues. Ms. Powell added that chiropractors should not presume that the Board can make a pronouncement regarding scope of practice and the next day chiropractors go back to Health Services. The Board may need to change regulations or consider other options before this issue completely resolved.

MUA Committee

Dr. Lerner reported that Dr. David Prescott made a presentation on the original scope of practice approved by the voters in 1922. Dr. Lerner complimented Mr. Prescott on his presentation and that the committee will continue to research scope of practice.

Dr. Lerner stated that when the committee moves forward with regulations, the committee will develop a standard of care that will relate to defining how the procedure will be performed, what facility, who is in charge, and any emergency procedures. Also, the committee is waiting for a legal opinion from DCA.

Mr. Conran stated that he was pleased to hear that the committee is developing standards about how and where MUA is performed. Mr. Conran stated his preference is that MUA be performed at hospitals.

Proposed Board Meeting Schedule for 2008

Judge Duvaras proposed that the two day meetings be changed to one day for cost savings and for the convenience of the professional members. Mr. Stiger explained that adding additional meetings increase cost and the meetings could start later in the day to save costs.

MR. CONRAN MOVED TO ADOPT THE PROPOSED BOARD MEETING SCHEDULE FOR 2008. DR. LERNER SECONDED THE MOTION. VOTE: 4-1. MOTION CARRIED.

Announcements

The next meeting is scheduled for January 10, 2008, in Sacramento.

Mr. Conran announced that in solidarity with board staff, he will not ask or accept his \$100 per diem for board meetings until the budget issue is resolved.

Public Comment

Dr. Charles Davis, D.C. congratulated the Board and staff for its work this year

Mr. Dean Falltrick stated that he wants to see the Board focus on the ability to expand continuing education in a distance learning format.

Kristine Schultz, Chiropractic California Association thanked the Board for all of its efforts.

Debra Mattos, Southern California University of Health Sciences says the Board made a tremendous improvement and thanked the Board.

Dr. Lerner thanked Mr. Stiger and the Board staff for their efforts.

Future Agenda Items

Judge Duvaras asked that a discussion on available legal remedies to restore the Board's budget. Mr. Conran announced that, in solidarity with BCE employees, he will not accept his per diem until the budget issue is resolved.

Dr. Tyler adjourned the public session at 12:43pm.